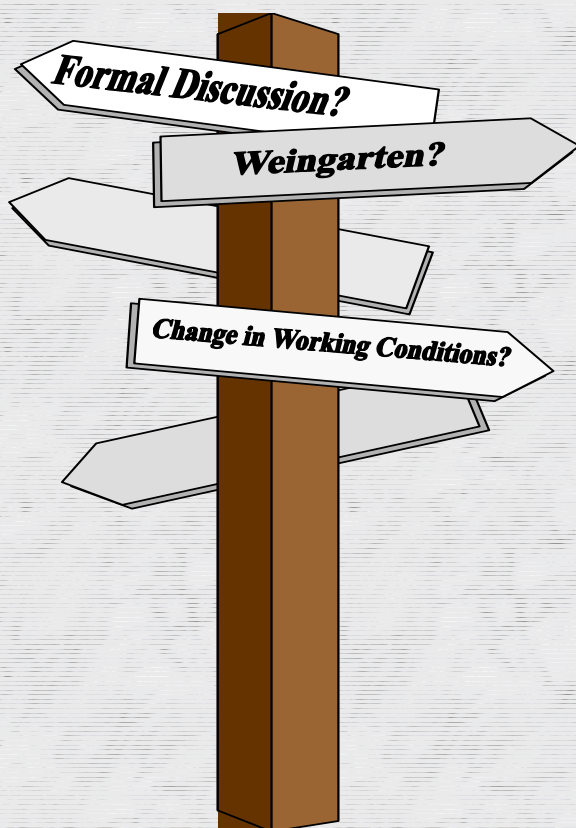


Supervisor's Guide Labor-Management Relations



**Civilian Personnel Management Service
Field Advisory Services Division
Labor Relations Branch
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TO: Supervisors and Managers

FROM: Field Advisory Services, Labor Relations Branch

SUBJECT: Supervisor's Guide to Labor-Management Relations

As a supervisor or manager in the Department of Defense, you make decisions that impact the working conditions of bargaining unit employees on a daily basis. Therefore, it is critical for you to have an understanding of your labor relations responsibilities and how to make these responsibilities fit into your particular work area.

The labor relations program is a dynamic program that can, at times, be confusing and challenging. This guide is designed to help you in meeting these challenges and providing answers to matters that you will encounter on a daily basis when making decisions impacting the working conditions of bargaining unit employees. For many supervisors, the most confusing aspect of the labor relations program is the uncertainty as to the actions that must be taken to comply with the Federal Service Labor-Management Relations Statute.

Your Labor Relations Specialist in the Civilian Personnel Office / Human Resource Office, provides guidance and assistance to managers and supervisors in meeting the challenges you will encounter. We encourage you to take advantage of their services.

I. Employee Rights

- Form, join, or assist a labor organization.
- Not form, join, or assist a labor organization.
- Act as a representative for labor organization.
 - ➡ Shop Steward or Chief Steward
 - ➡ Local President
 - ➡ Regional or National Representative
- As representative, present views of labor organization to Agency head, other Officials of Executive Branch, or Congress.
- Bargain collectively through labor organization with respect to conditions of employment.
- Exercise these rights without fear of penalty or reprisal from Agency Management.

5 USC 7102

II. Bargaining Unit

A. Definition

- A group of employees who have a common interest, and are represented by a labor organization in their dealings with Agency management.

B. Exclusions

- Supervisors
- Management officials
- Confidential employees
- Professional employees, unless a majority of professional employees vote for inclusion in the unit.
- Employees engaged in:
 - ➔ Personnel work in other than a purely clerical capacity
 - ➔ Investigators directly affecting an agency's internal security
 - ➔ Administering the provisions of Title 5, Chapter 71
 - ➔ Work that directly affects national security

C. Definition of Supervisor

- A person who has the authority to take, or effectively recommend taking, any of the following actions with respect to at least *one* employee:

➔ Hire	➔ Layoff
➔ Promote	➔ Remove
➔ Recall	➔ Direct
➔ Discipline	➔ Transfer
➔ Adjust grievances	➔ Suspend
➔ Assign	➔ Furlough
➔ Reward	

5 USC 7103 and 7112

III. Union Rights and Responsibilities

A. Rights

- ❶ Exclusive representative of employees in bargaining unit and entitled to act for and negotiate collective bargaining agreements for all employees in the unit.
- ❷ Be given the opportunity to be represented at any formal discussion.
- ❸ Be given the opportunity to be represented at any meeting with unit employees in connection with an investigation if the employee reasonably believes the meeting could result in disciplinary action and the employee requests union representation. (Weingarten Discussions)
- ❹ Be given the advance notice of any proposed changes to established conditions of employment and an opportunity to negotiate over these proposed changes absent any clear and unmistakable waiver of this right.

B. Responsibilities

- ❶ Represent interests of all bargaining unit members, regardless of union membership.
- ❷ Negotiate with management in a “good faith” effort to determine conditions of employment.

5 USC 7114

IV. Official Time

A. Definition

- Duty time that is granted to union representatives to perform union representational functions, without charge to leave or loss of pay, when the employee would otherwise be in a duty status. Time is considered to be hours of work.

B. When is official time permitted?

- It can be permitted for representational functions such as:
 - Contract or mid-term negotiations
 - Representing employees who file grievances
 - Any proceeding before the Federal Labor Relations Authority
 - For any employee representing an exclusive representative or any employee represented by an exclusive representative in any amount the agency and the exclusive representative agree to be reasonable, necessary, and in the public interest
- It is not permitted for conducting union's internal business, such as:
 - Soliciting membership
 - Collecting union dues
 - Any matters relating to internal management and structure of union
- Overtime for official time is not permitted because:
 - Representation is for the union and it is not for the primary benefit of the government as an employer
 - Time spent performing representational business outside an employee's normal workday is not considered the performance of hours of work within meaning of 5 USC §§ 5542 – 5544, the Fair Labor Standards Act, and 5 CFR 551.104 and 551.424
 - Exception to overtime prohibition provides overtime on official time if the employee/representative is already on overtime duty status

5 USC 7131

V. Furnish Information

■ Right to Information

- Agency is obligated to furnish to the exclusive representative, upon request and, to the extent not prohibited by law, data -
 - ⇒ which is normally maintained by the agency in the regular course of business;
 - ⇒ which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of bargaining; and
 - ⇒ which does not constitute guidance, advice, counsel, or training provided for management officials or supervisors, relating to collective bargaining....
- Unlike Freedom of Information Act (FOIA) requests, information must be provided free of charge
- If you receive a request for information from a union representative, contact your Labor Relations Specialist immediately.

5 USC 7114(b)

VI. Formal Discussion

A. Definition

- Discussion between one or more representatives of the Agency and one or more employees in the unit concerning any grievance or any personnel policy or practice or other general condition of employment.

B. Criteria (See 10 FLRA No. 24 (1982), See also 52 FLRA No. 17 (1996))

- Whether the individual who held the discussion is merely a first-level supervisor, or is higher in the management hierarchy;
- Whether any other management representative attended;
- Where the meeting took place;
- How long the meeting lasted;
- How the meetings were called (i.e., with formal advance written notice, or more spontaneously and informally);
- Whether a formal agenda was established for the meeting;
- Whether the employee's attendance is mandatory; or
- The manner in which the meetings were conducted (i.e., whether the employee's identity and comments were noted and transcribed).

C. What is a discussion?

- The term "discussion" in the Statute is synonymous with "meeting and no actual discussion or dialogue need occur for the meeting to constitute a formal discussion within the meaning of the Statute. See 37 FLRA No. 60 (1990).

D. Union's Role.

- The opportunity to be represented at a formal discussion means more than merely the right to be present. The right to be represented also means the right of the union representative to comment, speak and make statements. See 47 FLRA No. 11 (1993).
- On the other hand, this right does not entitle a union representative to take charge of, usurp, or disrupt the meeting. See 38 FLRA No. 61 (1990).
- Comments by a union representative must be governed by a rule of reasonableness, which requires the respect for orderly procedures. See 47 FLRA No. 11 (1993).

VI. Formal Discussion (cont'd)

E. Discussions That Are Not Formal

- Work assignments
- Progress reviews
- Performance appraisal
- Performance counseling
- Counseling on conduct

F. Discharging Obligation

- Give union reasonable advance notice of meeting (time, date, place, and subject to be discussed).
- Provide union opportunity to attend.

G. Questions and Answers

1. If an employee approaches me and asks a question about work rules or personnel practices, is this formal discussion or meeting?

- Under normal circumstances it is not. Since the employee initiated the conversation in an informal setting, the supervisor is free to respond to the employee's question. However, if, during the conversation, the supervisor establishes or changes general personnel practices or work rules the meeting or discussion could be considered formal. In addition, any discussion you have with the employee concerning a grievance he or she may have filed is a formal meeting.

2. Suppose I want to call an employee's attention to an existing work procedure--is that a formal meeting or discussion?

- The discussion of work procedures, assignments, or performances is normally not a formal meeting or discussion under the law. Nor is counseling an employee regarding individual performance. For example, reminding an employee to wear safety equipment is not a formal meeting or discussion under the law.

VI. Formal Discussion (cont'd)

3. I have decided to hold a formal meeting or discussion. What happens next?

- Contact your Labor Relations Specialist to find out the method of inviting the union as well as the appropriate union official to be invited. Having learned that, then an invitation should be extended to the union. .

4. If I plan to hold a formal discussion or meeting with employees, do I have to tell the employee that he or she has a right to union representation?

- Your obligation is to tell the union of the scheduled meeting or discussion and give the union the opportunity to be present. You do not have to tell the employee of the union's right to attend.

5. If the employee does not want a union representative at a formal discussion or meeting but the union demands to be present, do I allow the union representative in the meeting or discussion?

- Yes. Since the employee does not want to be represented by the union the union representative is representing the interests of the bargaining unit.

5 USC 7114(a)(2)(A)

VII. Investigative Meeting/Weingarten

A. Definition

- ➡ A union must be given the opportunity to be represented at an examination of a unit employee by an agency representative in connection with an investigation, if:
 - ➔ The employee reasonably believes the examination may result in disciplinary action; and
 - ➔ The employee requests representation.

B. Management's Obligations

- In all cases where the employee requests union representation, contact your Labor Relations Specialist for guidance and assistance. Some possible options would include:
 - Stop discussion, continue investigation by other means which do not involve interviewing bargaining unit employees.
 - Temporarily stop meeting to allow union representative to attend.
 -
- Some contracts have language which require management to inform employees, prior to questioning, of their Weingarten Rights. Check your contract to see if such language exists.

C. Union's Role

- ➡ Ask relevant questions.
- ➡ Assist employee to answer.
- ➡ Cannot answer questions, break up meeting, or prevent Agency from carrying out investigation.

5 USC 7114(a)(2)(B)

VII. Investigative Meeting/Weingarten (cont'd)

D. Questions and Answers

1. Does the interview or examination have to occur in connection with a formal investigation?

- No, an "investigation" occurs even when a supervisor seeks information to determine whether discipline should be taken against an employee. For example, an employee is suspected of being late for work, and the supervisor calls him or her into the office to determine if that is the case and, if so, why.

2. If I choose to conduct the investigatory interview with a union representative present, to what extent must I allow the union representative to participate in the interview?

- The Supreme Court has said that the:
 - a. Purpose of the union representative is to assist the employee by clarifying facts or bringing out favorable information.
 - b. Employer may insist on hearing the employee's account of the incident.
 - c. Employer need not permit an argument to develop with the union representative.
 - d. Employer has no duty to bargain with the union representative.

3. Does this mean that I can force the union to be quiet during the interview?

- Absolutely not. Although you may insist that the employee, not the union representative, answer your questions, you must allow the union representative an opportunity to clarify facts or bring out favorable information.

4. What do I do if the union representative becomes so argumentative as to completely disrupt the interview process?

- Warn the union representative and employee that if union representative continues to disrupt the meeting, you will be forced to end the interview and

make your disciplinary decision on the basis of other information (without the benefit of the employee's input).

VIII. Management Rights

A. 5 U.S.C. § 7106(a) reserves to Management the right to:

- ➔ Determine the Agency's mission, budget, organization, number of employees, and internal security practices;
- ➔ Hire, assign, direct, lay off, and retain employees;
- ➔ Suspend, remove, reduce in grade or pay, or discipline employees;
- ➔ Assign work, make determinations with respect to contracting out, and determine the personnel by which operations will be conducted;
- ➔ Select and appoint employees from appropriate sources; and
- ➔ Take whatever actions may be necessary to carry out the Agency mission during emergencies.

B. Decisions to act in these areas are management's prerogative and the union cannot negotiate on any of these rights. However, procedures for the exercise of these rights and arrangements that affect employees may be subject to negotiation.

C. 5 U.S.C. § 7106(b)(1) are "permissive" rights that Management may elect to negotiate over:

- ❶ Numbers, types, and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty.
 - ⤷ Numbers of employees is defined as the amount of employees or positions assigned to a particular subdivision, work project or tour of duty.
 - ⤷ Types of employees is defined as employees or positions that are assigned to perform work in a particular subdivision, work project or tour of duty.

VIII. Management Rights (cont'd)

- Grades of employees are related to types of employees. While the FLRA has not specifically defined “grades,” it usually concerns employees or positions at already established grade levels that are assigned to perform work in a particular subdivision, work project or tour of duty. However, union cannot negotiate on classification of positions or organizational structure.
- Organizational subdivision is defined as an organizational part or segment.
- Tour of Duty is defined as hours of the day and days of the administrative workweek an employee is regularly scheduled to work.
- Work Project is defined as a particular job or task.
- ② The technology, methods, and means of performing work.
 - Technology is defined as the technical method used in accomplishing or furthering the performance of the agency’s work.
 - Method is defined as the way in which an agency performs its work (how).
 - Means is defined as any instrumentality including any agent, tool, device, measure, plan or policy used by the agency for accomplishing or furthering the performance of its work.

IX. Making Changes In Conditions of Employment

A. Management's Role

- ☞ When management wants to make a change that affects conditions of employment of bargaining unit employees, the union must be given **reasonable advance notice** of the proposed change. Normally, your collective bargaining agreement will outline how much, if any, specific advance notice is required with your union when making changes that affect conditions of employment of bargaining unit employees.

B. Recognition of Obligation

- ☞ Does the decision produce a change or will the decision continue to use an existing way of doing things?
- ☞ Does the change affect bargaining unit employees?
- ☞ Does the change affect conditions of employment?
- ☞ Is the change significant?

X. Contract Administration

A. Definition

- ☞ How the terms of the labor agreement will be interpreted, applied, and enforced.

B. Collective Bargaining Agreement

- ☞ Document that establishes the framework for labor-management relations.
- ☞ Contains those working conditions mutually agreed to by union and management.

C. Contract Interpretation Principles

- ☞ Administer agreement consistently with the intent of the parties whom negotiated the agreement.
 - ☞ Language of agreement
 - ☞ Bargaining history
 - ☞ Past practice
 - ☞ Concern condition of employment
 - ☞ Clear and consistent
 - ☞ Long standing
 - ☞ Accepted by both parties
 - ☞ Not contrary to law, regulation, collective bargaining agreement

D. The Union Steward

- ☞ The union steward is an employee who serves as a representative of the union at a specific worksite. The stewards may be elected by union members or appointed by officers of the union.

The steward's duties are of two kinds:

1. Representing the union and bargaining unit employees in dealing with management. These are called representational activities and include handling grievances, policing the contract, keeping employees informed of working condition changes, and meeting with management. Stewards may be granted official time, without charge to leave, for these representational activities. The amount of time granted is negotiable.

2. Conducting internal union business such as participating in elections of union officials, soliciting membership, collecting dues and attending union meetings. The use of official time for conducting internal union business is prohibited by Title V. Such activities can only be done on non-duty time.

☞ For representational activities, management should recognize that fellow union members place the steward in a position of trust and should accord the steward the cooperation and respect necessary in order for the steward to do an effective job.

☞ Since stewards are responsible for representing the union and all bargaining unit employees, it is important that they have enough time to carry out representational responsibilities and have access to bargaining unit employees. At the same time, the steward, as an employee, is responsible for performing the assigned duties of his or her position. The goal in specifying a steward's activities in the contract should be to balance the steward's responsibility for representing the union and bargaining unit employees with management's primary responsibility for mission accomplishment.

E. The Supervisor-Steward Relationship

☞ Supervisors and stewards play an extremely important role in determining whether the labor-management relationship is a good or bad one. On a day-to-day basis, it is the supervisor who has primary responsibility for administering the contract and the steward whom has primary responsibility for policing the administration. The supervisor and the steward:

- Must know the agency's personnel policies, regulations, and the contract.
- Must understand and accept each other's role.
- Are under pressure from both sides and must try to resolve problems without violating the contract or going beyond the intent of labor-management policies.

XI. Negotiated Grievance Procedure

A. Definition

- ❶ Grievance means any complaint:
 - ➔ By any employee concerning any matter relating to the employment of the employee;
 - ➔ By any labor organization concerning any matter relating to the employment of the employee;
 - ➔ By any employee, labor organization, or agency concerning the effect of interpretation or a claim of breach of a collective bargaining agreement; or
 - ➔ Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

B. Exclusions

- ❶ Any claimed violation of 5 U.S.C. § 7321 (relating to prohibited political activities);
- ❷ Retirement, life insurance, or health insurance;
- ❸ A suspension or removal under 5 U.S.C. § 7532 (national security);
- ❹ Any examination, certification, or appointment; or
- ❺ Classification of any position that does not result in the reduction in grade or pay of an employee.

C. Procedures

- ❶ Assure union right to present and process grievances on behalf of itself or any unit employees;
- ❷ Assure an employee the right to present grievances on his/her behalf, and assure the union the right to be present during the grievance process;
- ❸ Provide for final and binding arbitration; and
- ❹ Provide for settlement of questions of arbitrability.

5 USC 7121

XI. Negotiated Grievance Procedure (cont'd)

D. Grievance Handling



- ❶ Before meeting
 - ➔ Inform union
 - ➔ Ensure privacy
- ❷ Set the tone - questions only
 - ➔ What's the problem?
 - ➔ What are the facts?
 - Who? What? When? Where? Why?
 - ➔ What (exactly) do you want?
 - ➔ Why are you entitled to that?
 - Where in the Contract/Law/Regulation does it say that?
- ❸ Offer no resolutions at the meeting
- ❹ Investigate
 - ➔ Check the facts.
 - ➔ Check the Contract/Laws/Regulations
 - ➔ What have other grievance decisions said?
 - ➔ What have arbitrators said?
 - ➔ Is it a "true" practice?
 - ➔ What does management want to do?
 - ➔ What will it cost to fight?
- ❺ Make a timely decision (contract timeframe for grievance response)
 - ➔ Be wary of partial relief.
 - ➔ Is it grievable?
 - ➔ If you agree to settle the grievance, grievance must be dropped.
- ❻ Things to avoid
 - ➔ Little or no research
 - ➔ Rubber-stamping
 - ➔ Personality clashes and power struggles
 - ➔ Giving the farm away to make the grievance disappear.

E. The Steward's Role in Processing a Grievance.

- ☞ One of the steward's most important roles is to handle grievances. Although the supervisor exercises certain authority over the stewards as an employee, when the supervisor and the steward discuss grievances, the steward acts as an official representative of the union.
- ☞ Stewards are trained, as are supervisors, to settle a grievance as close to the source of the dispute as is possible. Like supervisors, they have to live with any settlement reached. If they can arrive at a settlement, rather than having one imposed, both parties benefit.
- ☞ In handling grievances, stewards win or lose cases based on how carefully they have investigated the problem. This investigation may involve conducting interviews, determining pertinent dates, and getting names of witnesses. Stewards must ask questions for clarification, examine records, distinguish between fact and opinion, and decide what is relevant to the complaint. They also have to assure themselves that the grievance is legitimate.
- ☞ When a steward receives a case, he or she should determine whether a basis for the grievance exists. They should investigate to see if:
 - The contract has been violated.
 - The law has been violated.
 - Government-wide rules and regulations have been violated.
 - Agency regulations have been violated.
 - Past practices have been changed.
 - Employees are being treated unfairly.
- ☞ Just as stewards determine whether bargaining unit employees have legitimate grievances, supervisors should analyze any grievance received to determine whether there has been a violation of contract, law, regulation, past practice, or unfair employee treatment. If an employee files a grievance, contact your Labor Relations Specialist for assistance.

XII. Unfair Labor Practice (ULP)

A. Definition

-  An alleged violation of a right protected by the Federal Service Labor-Management Relations Statute (5 U.S.C. Chapter 71)
-  A ULP can be filed by an employee, the union or management.

B. Agency ULP Charges

- ❶ Section 7116(a)(1)
“Management shall not interfere with, restrain or coerce any employee in the exercise of its rights under the Statute.”
 - ➔ Threatening employees with reprisal
 - ➔ Interrogating unit employees on union activity
- ❷ Section 7116(a)(2)
“Management shall not encourage or discourage membership in a labor organization by discrimination in connection with hiring, tenure, promotion or other conditions of employment.”
 - ➔ Failure to promote because of union activities
 - ➔ Discipline in retaliation for activity as a union representative
- ❸ Section 7116(a)(3)
“Management shall not sponsor, control, or otherwise assist a labor organization....”
 - ➔ Campaigning for a specific individual
 - ➔ Help union organize membership drive
- ❹ Section 7116(a)(4)
“Management cannot discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or given any information or testimony....”
 - ➔ Transfer employee to undesirable job because he/she filed a ULP

XII. Unfair Labor Practice (ULP) (cont'd)

⑤ Section 7116(a)(5)

“Agency management shall not refuse to consult or negotiate in good faith with a labor organization....”

- Implement change in condition of employment without notifying union
- Bypass union (directly notify employees of a change without union present)
- Unilaterally change established past practice, absent a clear and unmistakable waiver of bargaining rights
- Refusal to bargain

⑥ Section 7116(a)(6)

“Failing or refusing to cooperate in impasse procedure and impasse decisions....”

- Refuse to provide the union official time for attendance at Impasse Panel hearing

⑦ Section 7116(a)(7)

“An agency cannot enforce any rule or regulation (other than a rule or regulation implementing Section 2302 of Title V) which is in conflict with any applicable collective agreement if the agreement was in effect before the date the rule or regulation was prescribed.”

⑧ Section 7116(a)(8)

“To otherwise fail or refuse to comply with any provision of the Statute....”

- Formal discussion
- Weingarten meeting
- Duty to supply information

C. Union ULP Charges

① Section 7116(b)(1)

“A labor organization shall not interfere with, restrain or coerce any employee in the exercise by the employee of any right under this chapter.”

- Expelling a member from the union for filing ULP against union.
- Suggesting to employees that they must become dues paying members in order to receive union representation.

XII. Unfair Labor Practice (ULP) (cont'd)

② Section 7116(b)(2)

“A labor organization shall not cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this chapter.”

→ Encourage agency to discipline employee due to anti-union activities.

③ Section 7116(b)(3)

“A labor organization shall not coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member’s work performance or productivity as an employee or the discharge of the member’s duties as an employee”

→ Fining union members for violating an internal union policy concerning acceptance of overtime work as an agency employee.

④ Section 7116(b)(4)

“A labor organization shall not discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition.”

→ Refuse to represent an employee due to race, color, creed....

⑤ Section 7116(b)(5)

“A labor organization shall not refuse to consult or negotiate in good faith with a an agency....”

→ Failure to send representatives to negotiating table who have the authority to commit union.

⑥ Section 7116(b)(6)

“Failing or refusing to cooperate in impasse procedure and impasse decisions....”

→ Refuse to meet with mediator on issues at impasse.

⑦ Section 7116(b)(7)

“(A) To call, or participate in a strike, work stoppage, or slowdown, or picketing of an agency in a labor-management dispute if such picketing interferes with an agency’s operations, or

(B) to condone any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

XII. Unfair Labor Practice (ULP) (cont'd)

⑧ Section 7116(b)(8)

“To otherwise fail or refuse to comply with any provision of the Statute....”

→ Use of official time for internal union business.

D. Questions and Answers

1. What is the relationship between grievances and ULPs?

- There is a very close relationship because both actions stem from disagreements which arise from the three-way relationship that exists among employees, the union, and management.

2. Is there a difference between grievances and ULPs?

- Yes, the differences relate mainly to the nature of the disagreement between the parties and the resolution procedure used to resolve the disagreement. Grievances relate to disagreements over the interpretation and application of a collective bargaining agreement between union or management or agency personnel regulations and are decided by an arbitrator. ULPs related to disagreements over the coverage and meaning of the labor law and are decided by the FLRA.

3. Can a violation of a collective bargaining agreement ever be a ULP?

- Yes, it can, but only under the most extraordinary of circumstances. One of the parties to the agreement must knowingly, deliberately, and willfully violate the agreement. For example, a ULP occurred in a case where one of the parties to the labor agreement announced that the agreement was no longer in effect (even though it was) and that grievances would not be processed. However, given the federal law's broad definition of a grievance, a ULP can be filed as a grievance, if the employee or union chooses.

4. When may a ULP be filed?

- A ULP may be filed anytime within 6 months of the date the injured party became aware of the violation of the labor law.

XII. Unfair Labor Practice (ULP) (cont'd)

5. Who determines if a ULP has been committed and how is this done?

- The FLRA decides ULPs and its process for determining if a ULP has been committed is divided into two phases.
- The first is the charge phase. During this phase, a representative of one of the regional offices of the general counsel of the FLRA independently investigates the matter to see if there are sufficient grounds to issue a complaint.
- If sufficient evidence does not exist then the FLRA regional office will dismiss the charges and drop the matter. The regional director's decision to drop the matter is subject to review by the FLRA general counsel. Decisions of the regional directors, however, are upheld in the overwhelming majority of cases.
- If the regional office finds that sufficient evidence does exist to require a complete investigation, a formal complaint is issued and a hearing is scheduled. The purpose of the hearing is to develop facts sufficient for the FLRA to determine whether an unfair labor practice has, indeed, been committed.

6. What happens if the agency is found guilty of committing a ULP?

- The FLRA may prescribe whatever remedy is necessary to correct the ULP. This may include revoking the management action that caused the ULP in the first place, and requiring management to go back to the situation as it existed before the ULP. Generally, however, the remedy consists of requiring the guilty party to sign and post a notice to employees which indicates that it will stop committing the ULP and that it will not take such actions in the future.

E. Free Speech

The union is forever criticizing me but I'm never allowed to respond, because my response would be a ULP, right?

This is not quite true. As a legal matter, 5 U.S.C., Chapter 71, does allow freedom of expression for supervisors. Such expression, however, must not threaten to interfere with employee rights regarding union activity, membership, or representation; for example, any statement you make that may have a "chilling" effect upon an employee in the exercise of his or her rights may be a ULP. However, agency management may, in some instances, "correct the record" if erroneous or misleading union comments are made. In this regard,

whether or not a manager's statement is a ULP often depends in the particular circumstances surrounding the incident. The best advice we can give is to call the your Labor Relations Specialist for advice before you say anything! This may be hard to do in the heat an argument but...

XIII. Labor-Management Cooperation

Management's relationship with its union(s) is like any other type of relationship. It can be highly adversarial or the parties may decide to enter into a partnership. Realistically, most Labor-Management relationships fall in between. Where there is a basis of trust, Interest Based Problem Solving is a means of resolving matters that are of concern to union and management. The following section will give you an overview of the process.

INTEREST-BASED PROBLEM SOLVING

BASICS OF INTEREST-BASED PROBLEM-SOLVING

ISSUE - a subject of discussion or negotiation; the *what*; the problem to be solved

INTEREST - one party's concern, need, or desire behind an issue; *why* the issue is being raised (mutual or separate)

POSITION - one party's proposed solution to an issue; the *how*

DEFINE ISSUE CLEARLY

An issue is a subject under discussion or negotiation. The first step in interest-based problem solving is to understand clearly what the issue or problem really is.

INTERESTS REVEAL THE FULL DIMENSIONS OF THE ISSUE

An interest is a party's concern or need behind the issue. It expresses why constituents care, the reason for raising the issue for discussion or negotiation. When all of the interests of both parties are brought together, they provide the full scope and dimension of the issue to be resolved.

When union and management interests are placed side by side, the team frequently discovers that several interests are held in common. These are mutual interests.

Many interests are held by one party only. These separate interests can often be met without interfering with the other party's interests. Separate interests are not always opposing interests.

A POSITION REFLECTS ONE PARTY'S DEMAND

A position is one party's proposed solution to an issue. Stated up front, it expresses what one party wishes.

STEPS OF THE INTEREST BASED PROBLEM SOLVING PROCESS

Step 1 - *Clarify Issue*

- Jointly select an issue.
- Phrase the issue as a question.
- State the issue clearly.

Step 2 - *Identify All Interests*

- State your interests, needs, and concerns.
- Write them on a chart.
- Convert positions to interests.
- Ask: What is the concern? Why is it a concern?

Step 3 - *Generate Options*

- Brainstorm.
- Be creative; think "outside the box."
- Use interests to generate more options.
- Clarify options.
- Avoid judging options.

Step 4 - *Develop Standards*

- Propose qualities of a "good" solution.
- Apply "kiss" and use only three.
- Clarify the meaning of each standard.
- Reach consensus on standards.

Step 5 - *Assess Options*

- Apply standards to options
- Discuss each option.
- Look for "ah - ha's."
- Confirm that options meet underlying interests.

Step 6 - *Reach a Solution*

- Amend and combine options.
- Build the agreement.
- Draft the agreement and check for consensus on it.

XIII. Labor-Management Cooperation

Don't Bargain Over Positions

Problem		Solution
Positional Bargaining: Which Game Should You Play?		Change the Game - Negotiate on the Merits
SOFT	HARD	PRINCIPLED
Participants are friends.	Participants are adversaries.	Participants are problem-solvers
The goal is agreement.	The goal is victory.	The goal is wise outcome reached efficiently and amicably.
Make concessions to cultivate the relationship.	Demand concessions as a condition of the relationship.	Separate the people from the problem.
Be soft on the the people and the problem.	Be hard on the problem and the people.	Be soft on the people, hard on the problem.
Trust Others.	Distrust Others.	Proceed independent of trust.
Change your position easily.	Dig in on your position.	Focus on interests, not positions.
Make Offers.	Make threats.	Explore interests.
Disclose your bottom line.	Mislead as to your bottom line.	Avoid having a bottom line.
Accept one-sided losses to reach agreement.	Demand one-sided gains as the price of agreement.	Invent options for mutual gain.
Search for the single answer: the one <i>they</i> will accept.	Search for the single answer: the one <i>you</i> will accept.	Develop multiple options to choose from; decide later.
Insist on agreement.	Insist on your position.	Insist on using objective criteria.
Try to avoid a contest of will.	Try to win a contest of will.	Try to reach a result based on standards independent of will.
Yield to pressure.	Apply pressure.	Reason and be open to reasons; yield to principle, not pressure.



LABOR RELATIONS TERMS

1. ADMINISTRATIVE LAW JUDGE (ALJ)

An individual who conducts certain hearings and makes initial decisions on behalf of the Federal Labor Relations Authority (FLRA). Most of the hearings are for the purpose of adjudicating unfair labor practice complaints. The decision of an ALJ is final and non-precedent setting unless one of the parties files an exception to the decision with the FLRA.

2. ADVERSE ACTION

An official personnel action, usually taken for disciplinary reasons, which adversely affects an employee and is of a severity such as suspension for more than 14 days, reduction in grade or status, or removal. For most Federal employees, an appeal system established by statute exists. The employee may choose to use the statutory procedure or, if coverage under the contract permits, the negotiated grievance procedure, but not both.

3. ARBITRATION

Method of resolving employment disputes through recourse to an impartial third party whose decision is usually final and binding. [See ‘**Interest Arbitration**,’ ‘**Grievance Arbitration**,’ and 5 U.S.C. 7121(b)]



4. ARBITRATOR

An impartial third party to whom disputing parties submit their differences for decision (award). An **ad hoc arbitrator** is one selected to act in a specific case or a limited group of cases. A **permanent arbitrator** is one selected to serve for the life of the agreement or a stipulated term, hearing all disputes that arise during this period.

5. ARBITRABILITY

Refers to whether a given issue is subject to arbitration under the negotiated agreement. If the parties disagree whether a matter is arbitrable or not, the arbitrator must resolve this threshold issue before reviewing the merits of the dispute.



6. ATTORNEY FEES

In accordance with 5 U.S.C. 5596 (Back Pay Act), an award of counsel fees if there is a determination by an arbitrator or the Merit Systems Protection Board that an unjustified or unwarranted personnel action has resulted in the withdrawal of a grievant's pay, allowances or differentials. The award must be in conjunction with an award of back pay on correction of the personnel action, the award must be reasonable and related to the personnel action, and the award must be in accordance with standards established under 5 U.S.C. 7701(g). Under 5 U.S.C. 7701(g), the employee, to obtain fees, must be the prevailing party, the award must be in the interest of justice (other than in a case involving discrimination), the fee must be reasonable, and it must have been incurred by the employee.

7. AWARD

In labor-management arbitration, the final decision of an arbitrator, final and binding on both parties. In very limited circumstances, either party may appeal the arbitrator's decision to the Federal Labor Relations Authority (e.g. award is contrary to law).

8. BACK PAY

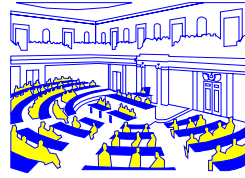
Pay, allowances, or differentials awarded to an employee for compensation lost due to an unjustified or unwarranted personnel action.

9. BARGAINING RIGHTS

Legally recognized right of the labor organization to represent employees in negotiations with employers.

10. BARGAINING UNIT

A group of employees recognized by the employer or group of employers, or designated by the Federal Labor Relations Authority as appropriate to be represented by a labor organization for purposes of collective bargaining. In the Federal sector, employees do not have to be dues paying members of a union in order to be represented by the union. [For a related term, see **Labor Organization.**]



11. CIVIL SERVICE REFORM ACT OF 1978 (CSRA)

Public Law 95-454 passed by the 95th Congress on October 13, 1978, which became effective on January 11, 1979. Title VII of the Act concerns Federal Service Labor-Management Relations and supersedes Executive Order 11491 as amended. This provided Federal employees a legal, statutory basis for their right to organize, bargain collectively, and participate through labor unions in decisions which affect their working conditions. Title VII is codified at 5 U.S.C. Chapter 71.

12. COLLECTIVE BARGAINING OR NEGOTIATIONS

The performance of the mutual obligation of the employer and the exclusive representative to meet at reasonable times, to consult and bargain in good faith, and upon request by either party to execute a written agreement with respect to terms and conditions of employment. This obligation does not compel either party to agree to proposals or make concessions.

13. COLLECTIVE BARGAINING AGREEMENT

A written agreement between an employer and a labor organization, usually for a definite term, defining conditions of employment, rights of employees and labor organizations, and procedures to be followed in settling disputes or handling issues that arise during the life of the agreement. [Also known as **Agreement, CBA, Contract or Negotiated Agreement.**]

CONFIDENTIAL

14. CONFIDENTIAL EMPLOYEE

An employee who acts in a confidential capacity with respect to an individual who formulates or administers management policies in the field of labor-management relations.

15. CONDITIONS OF EMPLOYMENT

Personnel policies, practices and matters whether established by rule, regulation or otherwise, affecting working conditions. It does not include policies, practices and matters relating to prohibited political activities, to the classification of any position, or to the extent the matters are specifically provided for by statute.



16. DUES ALLOTMENT (DUES WITHHOLDING, DUES CHECK-OFF)



Practice whereby the employer, by agreement with the union (and upon written authorization from the employee), regularly withholds union dues from bargaining unit employees' wages and transmits these funds to the Union. Dues allotment occurs without charge to the employee or the union. [See 5 U.S.C. 7115.]

17. DURATION CLAUSE

A clause in a collective bargaining agreement which specifies the time period in which the agreement is in effect. Duration clauses are normally three years in length. Duration clauses may provide for automatic termination on a certain date, or automatic renewal for a specific period of time.

18. EXCEPTION TO ARBITRATION AWARD

Under 5 U.S.C. 7122, either party to arbitration may file with the Federal Labor Relations Authority an exception (appeal) to an arbitrator's award because the award is 1) contrary to any law, rule or regulation; or 2) on other grounds similar to those applied by Federal courts in private sector labor-management relations (e.g., award does not draw its essence from the agreement; resolving issues not submitted to arbitration; granting remedy that exceeds claimed violation). The Authority will not consider an exception with respect to an award relating to actions taken in accordance with 5 U.S.C. 4303 and 5 U.S.C. 7512. See also 5 CFR Part 2425.

19. EXCLUSIVE RECOGNITION/REPRESENTATIVE

The status conferred on a labor organization which (1) receives a majority of votes cast in a representation election; and (2) is certified by the Federal Labor Relations Authority (FLRA) to represent all employees in an appropriate unit. Certification by the FLRA means that *only* this particular union is authorized to act for the employees in the bargaining unit and negotiate agreements on their behalf.

20. FEDERAL LABOR RELATIONS AUTHORITY (FLRA or AUTHORITY)

An administrative body empowered by Title VII of the Civil Service Reform Act of 1978 which interprets and oversees compliance with the Federal Service Labor-Management Relations Statute. The FLRA maintains 9 regional offices, with the Headquarters in Washington, D.C.



21. FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

An independent Federal agency which provides mediators to assist the parties involved in negotiations or in a labor dispute in reaching a settlement. FMCS provides lists of suitable arbitrators on request and engages in various types of “preventive mediation.”

22. FEDERAL SERVICE IMPASSES PANEL (FSIP or PANEL)

Organizational entity within the FLRA which resolves bargaining impasses in the Federal service. The Panel may recommend procedures, including arbitration, for the settlement of impasses or it may direct settlement of the impasse itself. It is considered the legal alternative to strikes and lockouts as a means to resolving impasses in the Federal sector.

23. FORMAL DISCUSSION

Under 5 U.S.C. 7114(a)(2)(A), a discussion between an agency representative(s) and a bargaining unit employee(s) concerning any grievance or any personnel policy or practice or other condition of employment which affects bargaining unit employees. The exclusive representative must be given the opportunity to be represented at these meetings.

24. GOOD FAITH BARGAINING

The standard of dealings imposed on an agency and an exclusive representative which includes the obligation to approach negotiations with a sincere resolve to reach a collective bargaining agreement; to be represented by properly authorized representatives who are prepared to discuss and negotiate; to meet at reasonable times and convenient places as frequently as necessary; to avoid unnecessary delays in negotiations; and in the case of the agency, to furnish relevant and necessary data requested by the union to the extent required or permitted by law.



25. GRIEVANCE

Any complaint by an employee concerning any matter relating to the employment of the employee; by a labor organization concerning any matter relating to the

employment of an employee; or by a labor organization, an agency, or an employee concerning interpretation or violation of the collective bargaining agreement or a violation, interpretation or application of a law, rule or regulation affecting conditions of employment. Whether a complaint is formally recognized and handled as a grievance depends on whether the subject of the complaint is covered under the grievance procedure.

26. GRIEVANCE ARBITRATION (RIGHTS ARBITRATION)

A third party procedure which may interpret language in a negotiated agreement, or otherwise resolve grievances under the contract. This form of arbitration determines what the rights of the parties are with respect to the negotiated agreement, laws, rules or regulations.

27. IMPACT AND IMPLEMENTATION (I & I) BARGAINING

A statutory right of the union under 5 U.S.C. 7106(b)(2) to negotiate on the procedures used to implement management decisions made under 5 U.S.C. 7106(a).



28. IMPASSE (DEADLOCK, STALEMATE)

A situation in which the parties are unable to reach a settlement or agreement.

29. INTEREST ARBITRATION

Occurs when an impartial third party resolves disputes concerning contract negotiations. It is used sparingly since it is frequently considered an undesirable substitute for negotiations. The FSIP normally performs the interest arbitration function.



30. INVESTIGATORY EXAMINATION

An examination conducted by an agency representative in which an employee is questioned as part of an inquiry to get facts. [See **Weingarten Right**.]

31. LABOR ORGANIZATION (UNION)

An organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment. [See **Bargaining Unit**.]



32. MANAGEMENT RIGHTS

The right of management to make day-to-day personnel decisions and to direct the workforce without notification to or consultation with the exclusive representative. Any changes in the exercise of these rights, however, would require notice to the exclusive representative and negotiations upon demand, if requested in a timely manner, on the impact and implementation of the decision. [See 5 U.S.C. 7106]



33. MEDIATION

A procedure by which an impartial third party (mediator) is used to settle disputes. The mediator assists in resolving the dispute by attempting to find a solution satisfactory to both parties in a dispute, but cannot render any binding decisions. Mediation is required before a negotiated impasse can be referred to the FSIP.

34. MID-TERM NEGOTIATIONS

The right, under certain circumstances, to initiate bargaining during the term of a collective bargaining agreement.

35. NATIONAL UNION

Ordinarily, a union composed of a number of affiliated local unions. The Bureau of Labor Statistics in its union directory, defines a national union as one with agreements with different employers in more than one state, or an affiliate of the AFL-CIO, or a national organization of employees.

36. NEGOTIABILITY

Refers to whether a given topic is subject to bargaining between an agency and the union. The Federal Labor Relations Authority makes the final decision whether a subject is negotiable or nonnegotiable.



37. NEGOTIABILITY APPEAL (PETITION FOR REVIEW)

If an agency believes that a union proposal is contrary to law or applicable regulation, or is otherwise nonnegotiable under the statute, it may inform the union of its refusal to negotiate. 5 U.S.C. 7117 provides a right to appeal the agency's determination of nonnegotiability to the FLRA.

38. NEGOTIATED GRIEVANCE PROCEDURE

A systematic procedure agreed to by the negotiating parties for the resolution of grievances. The negotiated grievance procedure is applicable only to employees in the bargaining unit. The scope of the negotiated grievance procedure is negotiated by the parties and may include certain matters for which a statutory appeal procedure exists, unless the parties negotiate their exclusion. Several matters **cannot** be included under its scope: 1) actions taken for violations of the Hatch Act; 2) retirement, life insurance or health insurance; 3) a suspension or removal taken in the interest of national security; 4) any examination, certification, or appointment; or 5) the classification of any position which does not result in the reduction in grade or pay of an employee. 5 U.S.C. 7121 requires the inclusion of a negotiated grievance procedure in all agreements and requires binding arbitration as the final step of the negotiated grievance procedure.



39. OFFICIAL TIME

Duty time that is granted to employees acting on behalf of the exclusive representative to perform representational duties without loss of pay or charge to an employees leave account. Official time may not be granted for internal union business [See 5 U.S.C. 7131].

40. OPM

Refers to the Office of Personnel Management (OPM). OPM supports Government program managers in their personnel management responsibilities through a range of programs. This includes administering a merit system for Federal employment; providing services related to retirement, health benefits and life insurance benefits for federal employees.



41. OPPOSITION TO EXCEPTION TO ARBITRATION AWARD

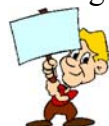
If a party files an exception (appeal) to an arbitrator's award, the other party may oppose the exception to the Authority in accordance with 5 CFR 2425.1. Oppositions to exceptions must be filed within thirty (30) days after the date of service of the exception.

42. PACKAGE BARGAINING

A negotiating technique whereby contract proposals are grouped into a "package" usually offering substantial concessions by one party, in exchange for substantial gains. Frequently, the package proposal will be advanced with the condition that it must either be accepted as presented or rejected entirely.

43. PAST PRACTICE

Existing practices sanctioned by use and acceptance, which amount to terms and conditions of employment even though not specifically included in the collective bargaining agreement. In order to constitute a binding past practice, it must be established that (1) the practice must involve a condition of employment; and (2) the practice must be consistently exercised for an extended period of time and followed by both parties, or followed by one party and not challenged by the other over a substantially long duration. It should be noted that if a matter is not a condition of employment, it does not become a condition of employment either through practice or agreement.



44. PICKETING

Demonstrating, usually near the place of employment, to publicize the existence of a labor-management dispute. This is commonly called **Informational Picketing** and is directed toward advising the public about the issue in dispute. This is specifically protected by 5 U.S.C. 7116(b) so long as the picketing does not interfere with agency operations. This is not to be confused with a "strike" as Federal employees are not permitted to strike under Federal law. Informational picketing may only be conducted outside an employee's established duty hours or the employee must be in an approved leave status.

45. RATIFICATION

Formal approval of a newly negotiated agreement by vote of the labor organization members affected.



46. REOPENING CLAUSE

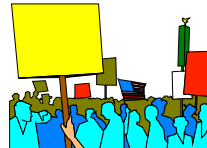
Clause in a collective bargaining agreement stating the time or the circumstances under which negotiations can be requested prior to the expiration of the contract. Reopenings usually restrict the number of issues subject to negotiation during the term of an agreement.

47. SENIORITY

Term used to designate an employee's status relative to other employees for determining order of overtime assignments, vacations, etc. Straight seniority is seniority acquired solely through length of service. Departmental or shop seniority considers status factors in a particular department or shop, rather than the entire agency. A seniority list is a ranking of individual workers in order of seniority.

48. SHOP STEWARD (UNION STEWARD, AREA STEWARD)

A local union's representative in an organization (department, shop, etc) designated to carry out union duties, represent employees in presenting grievances, collect dues and solicit new members. Stewards are usually fellow employees who are trained by the union to carry out these duties.



49. STRIKE

A temporary stoppage of work by a group of employees in connection with a labor dispute. In the Federal sector, strikes are specifically prohibited by Federal law and constitute an unfair labor practice under Section 7116(b)(7) of the Federal Service Labor-Management Relations Statute. Slowdowns, sickouts and related tactics are also prohibited by the Statute.

50. SUPERVISOR

Under 5 U.S.C. 7103, an individual employed by an agency having authority to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove unit employees; adjust their grievances or to effectively recommend such action. The performance of one or more of these duties qualifies an employee as a "supervisor" for labor relations purposes and excludes the employee from the bargaining unit. However, nurses and firefighters must spend a preponderance of their time doing so to be considered supervisors.



51. UNFAIR LABOR PRACTICE (ULP)

Action by either an employer or union which violates rights granted by the Federal Service Labor-Management Relations Statute. A ULP complaint may be filed by the agency, union or employees. [See 5 U.S.C. 7116]

52. UNILATERAL ACTION

Implementation of management decisions concerning personnel policies and matters affecting working conditions without providing the union advance notice of such changes in working conditions and an opportunity to negotiate to the extent permitted by law.

53. WAIVER

An agreement reached between union and management whereby one party voluntarily gives up rights afforded to it. For waivers to be enforceable, they must be “clear and unmistakable.” It should be noted that management cannot waive rights afforded to management under 5 U.S.C. 7106(a).



54. WEINGARTEN RIGHT

Refers to the right of a bargaining unit employee to be represented by the union when (1) the employee is examined in an investigation (investigatory examination) conducted by an agency representative; (2) the employee reasonably believes disciplinary action against him or her may result; and (3) the employee requests union representation. [See **Investigatory Examination.**]

55. ZIPPER CLAUSE

An agreement provision specifically barring any attempt to reopen negotiations during the terms of the agreement. [For a related term, see **Reopening Clause.**]

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